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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/058,065	01/29/2002	Dennis Chia-Bin Chen	53394.000559	3687

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HUNTON & WILLIAMS LLP
INTELLECTUAL PROPERTY DEPARTMENT
1900 K STREET, N.W.
SUITE 1200
WASHINGTON, DC 20006-1109

EXAMINER

STEPHENS, JACQUELINE F

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 08/31/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/058,065

Applicant(s)

CHEN ET AL.

Examiner

Jacqueline F. Stephens

Art Unit

3761

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 18 August 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).


4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☐ Other: _____.


EXAMINER A113761

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's arguments filed 8/18/05 have been fully considered but they are not persuasive. With regard to the objection to the specification and the rejection of claims 1-29 under 35 U.S.C. 112, first paragraph, applicant argues the specification provides detailed description of specific polymers that may be used. Applicant states the specification describes a particular subset of material combinations that produce an absorbent core having the claimed front pad absorbency and applicant references the passage on page 23, lines 21-29 of the specification. However, as previously argued, it is noted that the features upon which applicant relies (i.e., high AUL SAP in the front pad and high concentrations of lower AUL SAP in the front pad) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims.

Applicant argues that applicants have unexpectedly discovered that products having a front pad absorbent capacity of at least 32 grams have low urine leakage results, regardless of the absorbent capacity of other regions of the absorbent article, and that only a particular subset of material combinations produces an absorbent core having the claimed properties, and that Alemany does not inherently disclose the elements of claim 1 as Applicants have shown that absorbent cores having a front pad absorbent capacity greater than 32 are not inherently disclosed by the material combinations taught by Alemany. With regard to the unexpected results, arguments or conclusory statements unsupported by factual evidence are insufficient to establish unexpected results. A comparative study with the prior art to show unexpected results must employ the closest prior art in the case. Additionally, as stated above the 'particular subset of material combinations' necessary to produce the claimed result is not claimed as part of independent claim 1.

Applicant repeats the argument there is no motivation to modify Alemany to provide the claimed front capacity, and that increasing the absorbent capacity at the insult point of Alemany would contradict the Alemany device's theory of operation. However, the features upon which applicant relies (i.e., increasing the absorbent capacity at the insult point) are not recited in the rejected claim(s). The claims are limited to the front pad having an absorptive capacity of at least about 32 grams. The front pad encompasses the insult point as well as the remainder of the front pad. The claims do not provide a limitation for increasing the absorbent capacity of the insult point. Therefore, even though Alemany teaches a lower basis weight and lower absorbent capacity acquisition zone, as long as the front pad as a whole is capable of having an absorbent capacity of 32 grams, the reference meets the claim limitations. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims.